IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Bail Appl..No. 6289 of 2007(S)

CRIME NO.337/07 OF EZHUKONE POLICE STATION

: PETITIONERS/ACCUSED 3 & 4

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1. SIDDIQUE, S/O.HABEEBKUTTY, FIROZ MANZIL, THAMASSERY MURI, KOTTARAKKARA VILLAGE, KOLLAM.

2. MURUKAN, S/O.SUBBAYYA THEVAR, VALAYATH VEEDU, PADINJATTINKARA MURI, KOTTARAKKARA VILLAGE, KOLLAM.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6289 of 2007

Dated this the 17th day of October, 2007

ORDER

Petitioners are accused 3 and 4 and they face allegations for offences punishable, inter alia, under Sections 365 and 376 r/w 511 and Section 34 I.P.C. Altogether there are 4 accused persons. The defacto complainant, a girl, aged about 18 years, was allegedly induced to leave her house and travel to a place on the representation that her brother had met with an accident. When the defacto complainant reached there, she was illegally abducted by the 4 accused persons who came in 2 cars. The defacto complainant was persuaded to get into the car in which the petitioners were present. She was allegedly taken away to various places without her consent. In the car, the 3rd accused allegedly attempted to commit rape on her. These are the crucial allegations raised. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They are being unnecessarily arrayed as accused. The 1st accused is allegedly in love with the victim. The 1st accused had taken a car on rent basis from the 1st petitioner, ie. the 3rd accused. False allegations are unnecessarily being raised against the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications

and the materials collected clearly show the complicity of the petitioners. Absolutely there are no circumstances which can justify or warrant the invocation of the extraordinary equitable jurisdiction under Section 438 Cr.P.C.

4. The case diary has been placed before me. I have perused the case diary. In particular, I have gone through the F.I statement lodged as also statement of the victim girl. I shall not, at this early stage of investigation, embark on a detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on an anxious consideration of all the relevant inputs, I am not all persuaded to agree that the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked. The petitioners must, I agree with the learned Public Prosecutor, resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. They must then seek regular bail.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-